

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

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In Re:

**Alexander Winston**

Case No. 03-02665-5-ATS

Chapter 13

Social Security No. xxx-xx-4667

Address: 5571 Devinswood Road, Oxford NC 27565-

Debtor

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**MOTION TO AVOID JUDICIAL LIEN**

**NOW COMES** the Debtor above-named, through counsel, who respectfully moves this Court as follows:

1. This matter is a core proceeding pursuant to 28 U.S.C. § 157, and that the Court has jurisdiction pursuant to 28 U.S.C. § 151, 157 and 1334.
2. The Debtor files this motion to avoid a judicial lien pursuant to 11 U.S.C. § 522(f)(1)(A) and N.C.G.S. § 1C-1601.
3. The Debtor filed this case on July 25, 2003.
4. The Debtor is now, and has been at all times since this case was filed, the owner of real property known as 5571 Devinswood Road (F/K/A 1009-C Roxboro Road), Oxford, N.C. 27565 (hereinafter "said property"), more particularly described as: Same property as described in Deed Book 736 at Page 48 as set forth in the Granville County Registry of Deeds.
5. As of the date this case was filed, the fair market value of said property was \$53,877.00.
6. As of the date this case was filed, said property was the residence of the Debtor, and the Debtor has claimed and was entitled to claim an exemption in said property pursuant to N.C.G.S. § 1C-1601(a)(1) of not more than \$10,000.00.
7. That no objection has been filed regarding the exemptions claimed by the Debtor.
8. That Greenwood Trust Company by its agent Discover Financial Services, Inc., was listed as a creditor in the schedules filed in this case.
9. That said creditor holds a judicial lien, docketed in Granville County Clerk's File No. 02 CVD 14 and which was recorded in Granville County, Book of Judgments 195 at Page 42, on 6/26/02, in the amount of approximately \$6,233.04, plus interest to accrue at the rate of 8.00 percent per annum. That, upon information and belief, the balance owing to said creditor concerning said judicial lien, together with interest, as of the date this case was filed, was approximately \$7,726.00.
10. That said judicial lien constitutes a lien upon said property.
11. Upon information and belief, as of the date this case was filed, the only other liens against the property recorded in Granville County were the following:

Name of Creditor Holding Lien	Type of Lien	Payoff Amount of Lien
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Homeq Servicing Corp.	Deed of Trust	\$56,572.00
	Total Amount Of Other Liens:	\$56,572.00

12. That since the sum of the amount of the said judicial lien held by Greenwood Trust Company by its agent, the total amount of all other said liens on the said real property, and the amount of the exemption that the Debtor were entitled to claim if there were no liens on the property, exceeds the value of the real property (or, in the event that the Debtor owns less than a 100% interest in said real property, the value of the Debtor's interest in said property) by \$20,421.00, the said judicial lien impairs an exemption of the Debtor, and, therefore, the judicial lien is avoidable to the full extent of said judicial lien pursuant to U.S.C. § 522(f)(2)(A).
- 13.
14. The Debtor also moves the Court for approval of an presumptive additional attorney fee pursuant to U.S. Bankruptcy Court Local Rule 2016-1(a)(6), to pay for the processing of this motion and the ensuing order.

**WHEREFORE**, the Debtor prays that the Court enter an Order as follows:

1. Avoiding the judicial lien held by Greenwood Trust Company by its agent Discover Financial Services, Inc., to the full extent of said judicial lien; and Approve an additional attorney fee in the sum of \$ 200.00, plus an amendment filing fee of \$26, for a total of \$226, to pay for the services outlined above and the filing fee for a simultaneously filed amendment to official form Schedule D; and
2. Granting such other and further relief as to the Court may seem just and proper.

Dated: February 12, 2007

**LAW OFFICES OF JOHN T. ORCUTT, P.C.**

s/ John T. Orcutt

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John T. Orcutt  
N.C. State Bar No. 10212  
6616-203 Six Forks Road  
Raleigh, N.C. 27615  
(919) 847-9750

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Social Security No. xxx-xx-4667  
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**NOTICE OF MOTION**

The Debtor has filed papers with the court to avoid the judicial lien held by Greenwood Trust Company by its agent Discover Financial Services, Inc., pursuant to 11 U.S.C. § 522(f)(1)(A) and N.C.G.S. § 1C-1601, and for approval of an additional attorney fee for processing this motion and the ensuing order.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in this motion, or if you want the court to consider your views on the motion, then on or before fifteen (15) days after the date on this notice, you or your attorney must file with the court, pursuant to Local Rule 9013-1 and 9014-1, a written response, an answer explaining your position, and a request for hearing at: Clerk, U.S. Bankruptcy Court, P.O. Box 1441, Raleigh, N.C. 27602-1441.

If you mail your response to the court for filing, you must mail it early enough so that court will **receive** it on or before the date stated above. **You must also mail a copy to the following:**

John T. Orcutt Attorney 6616-203 Six Forks Rd. Raleigh, N.C. 27615	John F. Logan Chapter 13 Trustee P.O. Box 61039 Raleigh, N.C. 27661-1039
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If a response and a request for hearing is filed in writing on or before the date set above, a hearing will be conducted on the motion at a date, time and place to be later set and all parties will be notified accordingly.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in this motion and may enter an order granting that relief.

Dated: February 12, 2007

**LAW OFFICES OF JOHN T. ORCUTT, P.C.**

s/ John T. Orcutt

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John T. Orcutt  
N.C. State Bar No. 10212  
6616-203 Six Forks Road  
Raleigh, N.C. 27615  
(919) 847-9750

**CERTIFICATE OF SERVICE**

I, John T. Orcutt, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on February 12, 2007, I served copies of the foregoing **MOTION AND NOTICE OF MOTION TO AVOID JUDICIAL LIEN** by **certified mail, return receipt requested**, upon the following parties:

Greenwood Trust Company by its agent  
Discover Financial Services, Inc.  
Attn: Managing Agent  
P.O. Box 8003  
Hilliard, OH 43026-

Smith, Debnam, Narron, Wyche, et. al. .  
Attorneys  
P.O. Box 26268  
Raleigh, NC 27611-6268

and by **automatic electronic noticing** upon the following parties

John F. Logan  
Chapter 13 Trustee  
P.O. Box 61039  
Raleigh, N.C. 27661-1039

and by **regular first-class U.S. mail**, addressed to the following parties:

Alexander Winston  
5571 Devinswood Road,  
Oxford NC 27565-

s/ John T. Orcutt

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John T. Orcutt